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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 488 476 10

HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT (ALSO KNOWN AS HAMBURG AMERICAN LINE), APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED JUNE 27, 1924

(30,453)

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INDEX

	Original	Print
Record from Court of Claims	1	1
History of proceedings	1	1
Amended petition	1	1
Defendant's demurrer	11	5
Argument and submission of demurrer	11	5
Order of court dismissing petition	11	6
Opinion of court referred to in court's order	12	6
Substitution of attorney	19	13
Plaintiff's application for appeal	19	13
Order of court allowing said application	19	13
Clerk's certificate	20	13

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[fol. 1] **COURT OF CLAIMS OF THE UNITED STATES**

No. C 309

HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT
(Also Known as HAMBURG AMERICAN LINE)

vs.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

On April 5, 1923, the plaintiff filed its original petition.

On May 26, 1923, the defendant filed a demurrer to said petition.

Subsequently, to wit, on February 19, 1924, by leave of court, the plaintiff filed an amended petition. Said amended petition is as follows:

II. AMENDED PETITION

To the Honorable the Court of Claims:

The claimant, Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft (also known as Hamburg American Line) respectfully represents:

1. That it is, and was at all times hereinafter mentioned, a corporation organized and existing under and by virtue of the laws of the Free and Hanseatic City of Hamburg, Germany, and of the Empire of Germany, commonly known in the German language as the Hamburg-Amerika Linie, and in the English language as the Hamburg American Line, and is, and was at all the times hereinafter mentioned, a citizen or subject of the German Government.

[fol. 2] 2. That the German Government accords to citizens of the United States the right to prosecute claims against it in its courts.

3. That in the month of July, 1914, and for many years prior thereto, claimant maintained and operated regular steamship services under the German flag for the transportation of passengers and freight between its home port of Hamburg and other foreign ports and various ports in the United States and other parts of the world, all of which services were in the last part of July and early part of August, 1914, discontinued by reason of the outbreak of war between Germany and other European powers.

4. That on April 6, 1917, and at all times thereafter until the said personal property was expropriated by the United States as hereinafter set forth, claimant was the owner and in possession of certain personal property acquired and used by it in connection with its aforesaid steamship services and business, which property was then

located in, upon and about certain piers, docks and wharves (and the waters surrounding the same) and the premises immediately adjacent thereto situate on the Hudson River (also known as the North River) in the City of Hoboken, County of Hudson, State of New Jersey (said piers, docks and wharves being owned by the Hamburg American Line Terminal & Navigation Company, a New Jersey corporation), and at other points in the port or harbor of New York, to wit, at the foot of West 135th Street and the Hudson River, Borough of [fol. 3] Manhattan, City of New York, at the foot of West 26th Street and the Hudson River in said Borough and City, and at the foot of 33rd Street, in the Borough of Brooklyn, City of New York; and which property was at various dates between April 17, 1917, and June 24, 1918 (which dates claimant is unable to set forth with more particularly) expropriated by the United States of America acting by and through the War Department and the military forces, under the authority of the Act of Congress of August 29, 1916, chap. 418, § 1 (39 Stat. 645), and which property was upon said dates taken out of the possession and ownership of the claimant and into the possession and ownership of the United States of America.

5. That the items comprising said personal property are set forth in full in an inventory prepared in March, 1918, by officers of the Army on behalf of the United States of America and entitled "Final Complete Inventory. Material, Supplies, Gear and Equipment (not permanent) taken over in April, 1917, by Depot Q. M., New York, for the purpose of the Army Transport Service," duplicate originals of which inventory, as claimant is informed and believes, are in the possession of the War Department and the Navy Department, and also of the Alien Property Custodian, and claimant in lieu of setting forth said inventory in full in this petition makes reference to said duplicate originals in the possession of the United States.

6. That the claim made herein is for the value of all of the prop- [fol. 4] erty set forth in said inventory with the exception of the items contained in a schedule appearing on page 18 of said inventory, under the following headings:

Electric lighting system.
Boiler & engine room.
Engineering department blacksmith shop.
Floating craft.
H. A. L. No. 2 (tug boat).
H. A. L. No. 3 (tug boat).
H. A. L. No. 4 (launch).
Coal hoister.

7. That the property expropriated by the United States as aforesaid includes a large number of items of the following general character: office furniture, ships' furnishings and supplies; tools and movable equipment and appliances and cargo gear; timber, lumber, articles of iron and steel and other materials for repair of piers and pier equipment and ships; machine shop tools and supplies; black-

smith shop tools and supplies; electric and oil lighting supplies; carpenter shop tools and supplies; rope, cotton waste, coal and coal gear; paint shop tools and supplies; sail marker's shop tools and supplies; apparatus for handling baggage; equipment for fire prevention; and miscellaneous movable property used and useful in the operations incident to maintaining said piers and loading and discharging vessels thereat.

That the reasonable aggregate value of said personal property at the time when the same was expropriated by the United States was [fol. 5] one hundred thirty-nine thousand four hundred four and 90/100 dollars ($139,404.90).

8. That with respect to the property comprised in the inventory hereinabove referred to a certain memorandum or minute concerning the same was, on or about June 24, 1918, drawn up by the representatives of the United States and signed by them and by a representative of claimant and attached to the said inventory. The following is a true copy of said memorandum and of the signatures thereto:

"At a meeting held at the Office of the New York Trust Company, at No. 26 Broad Street, New York City, on June 24th at 3.30 p. m. at which were present: Messrs. W. G. Sickel, Julius P. Meyer and Capt. F. Jarka, representing the Hamburg-American Line; Messrs. Otto T. Bannard, Morgan M. Mann and Gilbert S. McClintock representing the Alien Property Custodian; and Col. A. C. Blunt, Col. F. H. Schoeffel and Paymaster J. Lyman Pratt representing the joint Board of the War and Navy Departments, respectively, and Capt. Lawson Sandford also representing the War Department, there was submitted an inventory, with explanatory notes, consisting of nineteen pages, showing the movable property including several items on pages eighteen and nineteen, namely: H. A. L. No. 2 Tug Boat, H. A. L. No. 3 Tug Boat, H. A. L. No. 4 Launch, a coal Hoister and three scows belonging to the Hamburg-American Line that had been taken over by the War Department since April 17, 1917, and for which the War Department is responsible.

"This inventory was marked for identification by the signatures [fol. 6] of Messrs. Sickel and Meyer of the Hamburg-American Line, Otto T. Bannard for the Alien Property Custodian and Col. Blunt for the Joint Board.

"Capt Sandford stated that the question as to whether the property was enemy property had been discussed and that the representatives of the Hamburg-American Line had stated that while the original inventory was as of the Hamburg-American Line Terminal and Navigation Co., the property was actually purchased and acquired by the Hamburg-American Line and, therefore, is alien enemy property.

"At the conclusion of the meeting it was agreed that if the Advisory Board subsequently reports favorably to that effect and such report is approved by the War Department, this inventory would be accepted as a list of all the movable property of the Hamburg-Amer-

ican Line in the hands of and chargeable to the War Department at its Hoboken Piers since April 17th, 1917.

(Signed) Otto T. Bannard, for Alien Property Custodian, A. C. Blunt, Lt. Col., U. S. A. W. G. Sickel, for Hamburg-American Line. O. T. B.

"NOTE.—While the minute provides that the execution of the official documents of record shall be contingent upon the approval, by the Departments concerned, of the recommendations of the Joint Army and Navy Board, it is now mutually agreed that the execution be accomplished forthwith, if only because of the difficulty of securing the presence of the numerous individuals involved.

"This proceeding in no way alters the status of the parties to the [fol. 7] agreement, but serves only to expedite the prompt settlement of the matters involved.

(Signed) J. Lyman Pratt, (title illegible.)"

9. That claimant hereby claims from the United States of America, as the true and reasonable aggregate value of its property expropriated as herein stated, the sum of $139,404.90.

10. That this suit is founded upon:

(a) The Constitution of the United States of America.

(b) The Act of Congress of August 29, 1916, chap. 418, §1, (39 Stat. 645).

(c) An implied contract with the Government, arising out of the acts herein stated, to make compensation for the value of claimant's property herein described, expropriated by the United States of America for its use.

(d) A claim, not sounding in tort, for unliquidated damages for the reasonable value of claimant's property, hereinbefore mentioned, expropriated by the United States of America for its use.

(e) An express contract with the Government for the payment of the reasonable value of the said property expropriated by the United States of America; said contract being evidenced by the memorandum concerning said property, signed by the representatives of the Government acting in that behalf, which is set forth in full in paragraph 8 hereof.

11. That no compensation has at any time been awarded or paid [fol. 8] to claimant by the United States of America for or in respect of any of the property mentioned in this amended petition.

12. That no action has been had on this claim in Congress; that no action has been had hereon by any of the Departments, except such action as is evidenced by the memorandum concerning claimant's property which is set forth in paragraph 8 hereof; that the claimant, Hamburg-Amerikanische Packetfahrt Aktien Gesellschaft (also known as Hamburg-American Line), is the sole owner of this

claim and no other person or corporation is interested therein; that no assignment or transfer of this claim, or of any interest therein, has been made; that claimant is justly entitled to the amount herein claimed from the United States of America after allowing all just credits and offsets; that claimant has not in any way voluntarily aided, abetted or given encouragement to rebellion against the United States; and that claimant (and its agents executing this amended petition in its behalf) believes the facts as stated in this amended petitioner to be true.

13. That neither claimant nor any assignee of claimant has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States, which suit or process is based upon the facts herein stated or any of such facts, or has reference to the subject matter of this amended petition.

fols. 9 & 10] 14. That the original petition herein was filed in the Court of Claims within six years after the claims herein set forth first accrued.

15. That this amended petition is signed by claimant's duly appointed attorney of record, and, claimant being a body corporate, is also signed and verified in its behalf by its attorneys in fact in the United States thereunto duly authorized, as appears from a duly exemplified copy of said power of attorney attached to the original petition filed as aforesaid.

Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft. Julius P. Meyer, Alfred Engelke, Attorneys in Fact. Carl L. Schurz, Attorney of Record.

Jurat showing the foregoing was duly sworn to by Julius P. Meyer et al. omitted in printing.

[fol. 11] III. Defendant's Demurrer—Filed May 26, 1923.

Note.—This demurrer was allowed to stand to the Amended Petition.)

Defendant demurs to the petition in the above entitled case for the reason that it does not state a cause of action against the United States.

Robert H. Lovett, Assistant Attorney General. W. F. Norris, Attorney.

IV. Argument and Submission of Demurrer

On February 18, 19 and 20, 1924, the demurrers in this and similar cases, were argued by Messrs. W. F. Norris and Herman J.

Galloway, for the defendants, and, on February 20, by Mr. Edgar W. Hunt, for plaintiff in this case, and the demurrer was submitted.

V. Order of Court Dismissing Amended Petition—Entered March 17, 1924

This case was submitted upon the defendant's demurrer to the plaintiff's amended petition. On consideration whereof, the court being of opinion that the said demurrer is well taken doth adjudge and order this 17th day of March, 1924, that the said demurrer be and the same is sustained, and the amended petition is dismissed.

See opinion in Deutsch-Australische Dampschiffs Gesellschaft' Case, No. C-576, March 17, 1924.

[fol. 12] VI. Opinion of the Court Referred to in Court's Order Dismissing Petition—Decided March 17, 1924.

No. C-576

Deutsch-Australische Dampfschiffs-Gesellschaft

vs.

The United States

Campbell, Chief Justice, delivered the opinion of the court:

This case is before the court upon the defendant's demurrer to the petition, which in substance avers: Plaintiff is a corporation organized and existing under the laws of Germany, and is a citizen of Germany, and at the times mentioned in the petition was engaged in the business of operating steamships, of which it was the owner of many, its principal office and place of business being at Hamburg, Germany. In or about the month of May or June, 1917, pursuant to authority granted by the joint resolution of May 12, 1917 (hereinafter set forth), the President of the United States "took over to the United States the immediate possession and control" of the plaintiff's steamers which then were within the jurisdiction of the United States or its insular possessions and which were the sole and exclusive property of plaintiff and in its possession. The names of the six steamers and the alleged fair and rea-onable value of each is stated, and the aggregate value was $9,022,000.

Also it is alleged that certain stores and equipment belonging to the several steamers were also taken over, and that by the taking over of the possessions and control of the steamers in the manner stated and "thus appropriating the said steamers to its own use, enjoyment, and benefit," the United States impliedly agreed with plaintiff to

pay plaintiff the fair and reasonable value of said steamers, and also for their stores and equipment, but that they have wholly failed and refused to pay the same. It is further averred that the survey required by section 2 of the joint resolution has been duly made and report thereof filed with the Secretary of the Navy. The claim is for the alleged aggregate value of the steamers besides the value of their coal, stores and equipment. A further claim of $10 per deadweight ton per month for each steamer as the value of its use is made in the petition, but the plaintiff abandoned this claim, insisting, however, upon the alleged value of its property. It was explained in argument that the several steamers, with the exception of those in Cuban harbors, were all in American harbors at the outbreak of the war. They were merchant vessels which had sought asylum in these harbors and were left unmolested until the United States entered the war. There were fifteen other suits involving vessels of the alleged aggregate value of over $30,000,000 submitted with this one, besides a large number of similar cases heard at the same time.

[fol. 13] On April 6, 1917, the Congress adopted the joint resolution declaring the existence of a state of war between the United States and the Imperial Government of Germany. On that day some of the vessels in question were taken into possession and control by agents of the United States Government. On May 12, 1917, the Congress adopted a joint resolution as follows:

"Chap. 13. Joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

"Sec. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department.

These findings shall be considered as competent evidence in all proceedings on any claim for compensation."

By proclamation dated June 30, 1917, which incorporated the joint resolution of May 12 and mentioned by name 69 German ships, it was ordered by the President that "through the United States Shipping Board there be taken over to the United States the possession and title of the aforementioned vessels. The United States Shipping Board is further hereby authorized to repair, equip, and man the said vessels; to operate, lease, or charter the same in any service of the United States or in any commerce, foreign or coastwise; and to do and perform any and all things that may be necessary to accomplish the purposes of the joint resolution above set forth."

A question presented at the threshold is whether the Court of Claims has jurisdiction in the premises. The plaintiff contends that the allegations bring its case within the scope of section 145, Judicial Code, conferring power to hear and determine claims founded upon the Constitution or any law of Congress, or upon implied contract with the United States. The action is not founded upon the Constitution or a law of Congress. The joint resolution authorized the President to take title to the vessels and he did so. It does not in terms declare a liability of the Government or of itself create a right in plaintiff. It was said by Judge Richardson in Ludington's case, 15 C. Cls. 453, that to sustain a claim as one founded on a law of Congress there must be "a statute liability on the part of the Government." See Hukill case, 16 C. Cls. 562. In Hvoslef case, [fol. 14] 237 U. S. 1, 11, the statute authorized and directed the payment of certain claims. The act construed in the Medbury case, 173 U. S. 492, created the right to payment.

Where suits for compensation have been maintained because of the taking by the Government of private property for public use they were not founded upon the Constitution or the Fifth Amendment or a law of Congress, but upon an implied contract arising out of the circumstances of the taking. In United States v. Great Falls Mfg. Co., 112 U. S. 645, one of the earliest cases on the subject, the principle was announced, and it has been repeatedly reaffirmed. In United States v. North American Transportation & Trading Co., 253 U S. 330, 335, it was said: "The right to bring this suit against the United States in the Court of Claims is not founded upon the Fifth Amendment, but upon the existence of an implied contract entered into by the United States." See Tempel case, 248 U. S. 121, 129; Peabody case, 231 U. S. 530, 539; Klebe case, — U. S. —, decided November 12, 1923 (57 C. Cls., 160). The circumstances of the case may rebut the implication of such a contract. Horstmann case, 257 U. S. 138, 146; Ball Engineering Co. v. White & Co., 250 U. S. 46, 57; Klebe Case, supra.

It was the action taken in virtue of the joint resolution that deprived plaintiff of its property, and the question is whether the circumstances gave rise to the implication of a contract of which the Court of Claims has jurisdiction. Manifestly the joint resolution

was an exercise of the war power of Congress. It finds support in the constitutional provision that empowers Congress to declare war and to make rules concerning captures on land and water. Art. 1, § 8, cl. 11. See Stoehr v. Wallace, 255 U. S. 239, 242; Commercial Trust Co. v. Miller, 262 U. S. 51; Brown v. United States, 8 Cranch 110, 126; Miller v. United States, 11 Wall. 268, 305; Fischer v. Palmer, 259 Fed. 355. Salamandra Ins. Co. v. New York Life Ins. Co., 254 Fed. 852. Several of these cases deal with the trading with the enemy act, but that act granted broad powers to the Alien Property Custodian in dealing with enemy property, and if the property involved in this and similar suits had not been taken, as it was, it could admittedly have been taken by the Alien Property Custodian, in which event there would have been no jurisdiction in this court.

In Brown v. United States, 8 Cranch 110, the Circuit Court had condemned certain pine lumber seized as enemy property. The court's action was sought to be sustained upon the mere fact of the declaration of war. This the Supreme Court said was not sufficient, but that legislative action was essential to confer upon courts authority to condemn enemy property. Chief Justice Marshall said, page 122: "That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but can not impair the right itself. That remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will. But until that will shall be expressed, no power of condemnation can exist in the court." The court could not pronounce a sentence of condemnation in the absence of legislative authority so to do. In the instant case the [fol. 15] court is asked to order compensation for enemy property seized by authority of a legislative act that is silent on the question of jurisdiction. As already stated, the taking of private property for public use by the Government, and for which the Fifth Amendment requires compensation to be made, falls within the class of claims founded upon implied contract, and the duty imposed by this amendment is an essential element in raising the necessary implication of an agreement to pay.

But the limitations or restrictions of the Fifth Amendment do not affect the exercise of the war power conferred upon Congress when enemy property is taken. It was said in Miller v. United States, 11 Wall. 268, 304, that where the statutes were "an exercise of the war powers of the Government, it is clear they are not affected by the restrictions imposed by the Fifth and Sixth Amendments" (See Herrera case, 222 U. S. 558, 572.) It was added: "The Constitution confers upon Congress expressly power to declare war, grant letters of marque and reprisal, and make rules respecting captures on land and water. Upon the exercise of these powers no restrictions are imposed. Of course the power to declare war involves the power to prosecute it by all means and in any manner

in which war may be legitimately prosecuted. It therefore includes the right to seize and confiscate all property of an enemy and to dispose of it at the will of the captor. This is and always has been an undoubted belligerent right." See Morrisdale Coal Co. Case, 55 C. Cls., 310, 315; Salamandra Ins. Co. v. New York Life Ins. Co., 254 Fed. 852, 858; Fischer v. Palmer, 259 Fed. 355, 358.

In Green's Case, 10 C. Cls. 466, the facts were that the plaintiff, a citizen of the United States, was domiciled in Nashville, Tennessee. On the 16th day of February, 1862, while the capture of Nashville by the United States Army was imminent and expected, plaintiff went south with a large amount of his firm's moneys, which he took for investment. "While absent from his residence, he was not engaged in giving aid or encouragement to the rebellion, other than such as might arise from his voluntarily leaving his domicile and remaining within the Confederate lines and having commercial dealings with the people." When he left Nashville he was the owner of certain rent-producing buildings occupied by tenants and left in charge of his agent. The agent continued to collect the rents and care for the buildings until December, 1864, when they were seized by the special supervising agent of the Treasury as abandoned property, who collected the rents until July 8, 1865. The suit brought in October, 1870, was to recover these rents. The authority for taking the property was the act of July 2, 1864, 13 Stat. 375, which did not in terms prescribe a remedy. The opinion of the court, delivered by Judge Nott, says that "the case presents, with unusual clearness, the question whether the Government is judicially liable for any of the war measures resorted to in the late rebellion other than the liability created by the abandoned or captured property act," and states the question to be whether the Government is liable for the acts of its officers, done under color of its authority within the insurrectionary district, where the party injured was loyal and the circumstances were such as would give a citizen in time of peace a right of action against the Government under the mandate of the Constitution that private property should not be taken for public [fol. 16] use without just compensation. Declaring that it made no difference in the applicable rule whether the property was taken by the Army or the Navy, or by an officer of the Treasury, the court concluded that the Government was not liable upon implied contract. The court said (p. 471): "It is inevitable that a war must be prosecuted rigorously, and it is desirable that it be prosecuted as little to the injury of a government's own citizens as possible. In the prosecution of a war the discretion of a government, so far as the enemy is concerned, takes the place of ordinary constitutional restrictions or statutory provisions."

To relieve the rigor of the situation, the act of March 12, 1863, commonly called the abandoned or captured property act, was enacted. It was a beneficent piece of legislation, and, speaking of it, the court say in Klein's Case, 13 Wall. 128, 138: "There is, so far as we are aware, no similar legislation mentioned in history." It created a right where none existed before, Anderson Case, 9 Wall. 56, and authorized suits under specified conditions for the proceeds

of sales of property that had been taken or seized as "enemy property." Although it was recognized, as was said in Lamar v. Brown, 92 U. S. 187, 195, that the United States, during the Civil War, occupied the position of both belligerent and constitutional sovereign," it was also recognized, and uniformly held, that it was only in virtue of the act mentioned that even the loyal citizen, whether he resided in the one or the other of the sections, could assert in the Court of Claims compensation for his property that had been seized or appropriated as enemy property. The theory of an implied contract arising out of such seizure or appropriation finds no support in the decided cases. In Young's Case, 97 U. S. 39, 67, it was said of the British subject, in whose right the suit was brought: "Collie has been deprived of no right he ever had. Neither he nor any one similarly situated has ever been permitted to sue the United States in their own courts upon such a claim." See Klein Case, 13 Wall 128, 137; Moore Case, 10 C. Cls. 375, 383; Haycraft Case, 22 Wall. 81, 92; Hijo Case, 194 U. S. 315.

In the Herrera Case, 43 C. Cls. 430, the plaintiff insisted that there was an implied contract, but this court held it had not jurisdiction under the Tucker Act, and quoted from the Hijo Case, 194 U. S. 315, 320, where it is said: "The vessel was therefore to be deemed enemy's property. It was seized as property of that kind, for purposes of war and not for any purposes of gain." The judgment was affirmed by the Supreme Court. In the course of their opinion, reference is made to the modern rules of war, stated by Kent (1 Kent, 92, 93), and which are in substance urged here, and the opinion proceeds: "If the record presented such a case, the question could be raised whether it presented one for judicial cognizance, even if a court could share the indignation which the learned commentator says all mankind would feel. It is certain that the court's power cannot be enlarged by its emotions." Herrera Case, 222 U. S. 558, 572.

The second section of the resolution directed that a survey be made, the results of which should be competent evidence in any proceedings for compensation. This provision is entirely consistent with the idea that Congress intended to reserve for future determination any question of compensation. It falls short of conferring [fol. 17] power upon this court to determine it. It is significant when the policy of legislation during the war is considered that provision was made for action against the Government in all cases where it was intended to confer the right. Notwithstanding this court had the power to hear and determine suits against the Government conferred by section 145 of the Judicial Code, the numerous statutes authorizing requisitions and the taking of private property expressly designated the court where suits could be brought. Some of these conferred jurisdiction on the Court of Claims; some on District courts, and some on both of these courts. Mr. Justice Brandeis, in the Pfitsch case, 256 U. S. 547, 552, says: "A survey of the war legislation permitting the seizure of property discloses that Congress has established three distinct jurisdictions for the purpose of suit against

the United States for compensation." He mentions 25 different instances. The Government cannot be sued without its consent, and the power to hear and determine suits against the United States should not and does not rest in mere inference or implication. It was said in Haycraft's case, 22 Wall. 81, 92: "A sovereign cannot be sued in his own courts except with his consent. This is an action against the United States in its own Court of Claims. The appellant must, therefore, show that consent has been given to its prosecution." Every court must take notice of the limits of its jurisdiction. Reid case, 211 U. S. 529. It was suggested in argument in some of this class of cases that the Government took charge of the railroads under provisions of the national defense act, which did not prescribe a method for ascertaining compensation. But this action taken in an emergency was followed by a statute, which provided the necessary forum. The trading with the enemy act authorizing the Alien Property Custodian to take over and to dispose of enemy property did not permit suits by the enemy owners. Nor does the joint resolution of May 12 authorize suits by the German owners of the vessels. If this resolution can be made the basis of the suits they could have been instituted as soon as the President took action under it. Can it be supposed that the Government intended to open its courts to enemies seeking compensation for property taken from them while the war was yet flagrant? The history of the enactment rebuts any such idea. A joint resolution was introduced and referred in the Senate and in the House. As reported to the Senate by its committee, the joint resolution contained five sections. (Cong. Rec., vol. 55, pt. 2, p. 1572.) The first two sections contained all that was finally adopted. The three other sections purported to authorize suits to be brought by parties interested in the vessels and had provisions relative to suits. By section 5 the suits could be brought in the Court of Claims. All of sections 3, 4, and 5 thus reported were stricken out by amendment in the Senate. (Cong. Rec., vol. 55, pt. 2, p. 1575.) An amendment proposed by Senator Knox authorizing the President to "requisition" the vessels was voted down. (Cong. Rec., vol. 55, pt. 2, pp. 1575, 1576.) The joint resolution as amended was adopted by the Senate, and in that shape was sent to the House, where it was taken up, superseding the one on its calendar, and passed as it came from the Senate. This definite action by the Senate, concurred in by the House, confirms the view that there was [fol, 18] no intention to authorize suits in the Court of Claims on account of the seizure of these vessels. See Pfitsch case, supra.

The plaintiff argues that the United States did not confiscate or intend to confiscate the property and that the taking must consequently be referred to the power of eminent domain with a duty to make compensation. What we have said sufficiently answers this contention. We do not think it necessary to assert that there was a confiscation, nor to deny that the Congress may have intended that the United States would at some time account for the vessels or their ascertained value. If this court is without jurisdiction, its conclusions upon these questions would probably be coram non judice.

The result, however, in this case, would not be altered if the proper conclusion were that the taking over of the vessels amounted to a sequestration of them. The act authorizing their seizure did not confer power on the Court of Claims to entertain the present suit, nor does its general jurisdiction extend to suits of this kind. It was said in Haycraft's case, supra: It is for Congress, not the courts, to determine whether this jurisdiction shall be extended and other remedies provided."

The demurrer should be sustained. And it is so ordered.

Graham, Judge; Hay, Judge; Downey, Judge, and Booth, Judge, concur.

[fol. 19] VII. Substitution of Attorney

On June 4, 1924, William B. Devoe, Esq., filed a motion suggesting the death of Carl L. Schurz, former attorney of record in this case, and asked leave of court to be substituted as attorney of record. On June 7, 1924, the court allowed the motion, and the said William B. Devoe was substituted as attorney of record.

VIII. Plaintiff's Application for and Order Allowing Appeal—Filed June 10, 1924

From the judgment rendered in the above-entitled cause on the seventeenth day of March, 1924, in favor of the defendant, the claimant, by its attorney, on June 10, 1924, makes application for and gives notice of, an appeal to the Supreme Court of the United States.

William B. Devoe, Attorney for Claimant.

Ordered: That the above application for appeal be allowed as prayed for.

By the Court.

June 16, 1924.

[fol. 20] Court of Claims of the United States

[Title omitted]

Clerk's Certificate

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of the case on demurrer; of the order of the court dismissing the amended petition; of the opinion of the court referred to in court's order; of the sub-

stitution of attorney of record; of the plaintiff's application for a appeal and of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affix the seal of said court at Washington City this Nineteenth day o June, A. D., 1924.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Se of the Court of Claims.)

Endorsed on cover: File No. 30,453. Court of Claims. Term No. 488. Hamburg-Amerikanische Packetfahrt Aktien-Gesellschaft (als known as Hamburg American Line), appellant, vs. The United States. Filed June 27th, 1924. File No. 30,453.